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September 12, 2003

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Portals
Washington, DC 20554

Re: ***Ex Parte***
CC Docket No. 03-167

Dear Secretary Dortch:

This *ex parte* is in response to the Staff's request that Globalcom, Inc. ("Globalcom") respond to certain aspects of SBC's Reply Comments that were filed with the Commission on August 29, 2003 in the above-referenced proceeding.

SUMMARY

SBC has clearly failed to meet its burden of proof[1] to demonstrate to this Commission that all of its UNE rates are TELRIC compliant in Illinois and Wisconsin. Specifically, SBC has failed to meet its burden to prove that its current Illinois and Wisconsin non-recurring rates for the DS1 loop and transport EEL combination are TELRIC compliant. In an effort to sidestep this defect and simultaneously resolve Globalcom's objections to SBC-IL's 271 Application, while ignoring SBC-WI's similar deficiency, SBC offers in its Reply Comments to charge a total of $932.06 for the nonrecurring charges ("NRCs") associated with provisioning a DS1 loop and transport EEL combination, uncollocated, in Illinois. It is Globalcom's position that

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[1] *See Application of BellSouth Corporation, BellSouth Telecommunications, Inc. , and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order*, 13 FCC Rcd 20599, 20635-39, ¶¶ 51-59 (1998) ("Second BellSouth Louisiana Order").

notwithstanding this offer, SBC-IL's 271 Application should still be rejected because SBC-IL's $932.06 proposal is *still not reasonable* under TELRIC standards since the amount does not fall within a range that a reasonable application of TELRIC principles would produce. On average SBC-IL's proposal is *almost double* the amount charged by SBC in states where SBC has 271 authority.

In addition, SBC-IL's claims that Globalcom did not properly raise its objections before the Illinois Commerce Commission ("ICC") and that its EELs NRCs comply with TELRIC should be rejected. Contrary to SBC-IL's assertions, Globalcom did raise its objections regarding SBC-IL's EEL NRCs before the ICC; however, the ICC never had the chance to investigate the merits of the NRCs let alone review Globalcom's objections because SBC-IL sponsored SB 885 in the Illinois General Assembly that purposefully abated the on-going UNE cost proceeding, ICC Docket 02-0864. Moreover, the fact that the rates are interim does little to mitigate the excessive nature of the rates because the FCC's review of the TELRIC rules and state proceedings required by the Triennial Review Order will delay a permanent rate investigation.

With Respect to Wisconsin, SBC-WI has not addressed the fact that its total EEL NRCs of $2,295 for the EEL at issue is $1,784.65 more than the amount SBC charges on average in SBC 271 approved states. This dramatic difference demonstrates that these rates are not reasonable by TELRIC standards.

At bottom, SBC-IL's and SBC-WI's 271 Applications are still defective and should be rejected for these reasons, as further discussed below, and as provided in Globalcom's August 6 Comments that were filed in this proceeding ("Globalcom's August 6 Comments").

I. SBC-IL'S 271 APPLICATION SHOULD BE REJECTED BECAUSE SBC-IL'S PROPOSAL TO CHARGE A TOTAL OF $932.06 IN NRCS FOR THE DS1 LOOP AND TRANSPORT EEL COMBINATIONS IS NOT REASONABLE UNDER TELRIC STANDARDS SINCE THE AMOUNT DOES NOT FALL WITHIN A RANGE THAT A REASONABLE APPLICATION OF TELRIC PRINCIPLES WOULD PRODUCE.

In its Reply Comments, SBC-IL characterizes Globalcom's demonstration that its EEL NRCs are non-TELRIC compliant as a "business-to-business" issue and attempts to address Globalcom's concerns by reducing the DS1 loop and transport EEL combination, uncollocated, to a total of $932.06.[2] SBC-IL's proposal is, however, still unreasonable by TELRIC standards and SBC-IL's own data reveals that this amount greatly exceeds the total amounts SBC charges for such combinations in SBC 271 approved states. Because of this, SBC-IL's 271 Application should be denied.

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[2] SBC's Reply Comments at 62.

In particular, SBC' Reply Comments, Reply Affidavit of Karl Wardin, Attachment B, page 2, demonstrates that SBC-IL's proposed total EEL NRCs of $932.06 is $581.84 and $494.39 higher than the Commission approved rates in California and Texas, respectively, and is still well above the total NRCs SBC charges for the same EEL combination in SBC 271 approved states. On average, SBC-IL's proposal, as shown below, is nearly double what SBC charges in those states.

271 Approved States	DS1 EEL NRC[3]	Diff. from SBC-IL Proposed Rate of $932.06
Arkansas	$521.02	$411.04
California	$350.22	$581.84
Kansas	$521.02	$411.04
Missouri	$778.41	$153.65
Nevada	$344.75	$587.31
Oklahoma	$624.81	$307.25
Texas	$437.67	$494.39
Average	$511.13	$420.93

As Globalcom explained in its August 6 comments,[4] to the extent that the FCC has approved a 271 application that includes interim rates, the FCC has been comfortable in doing so when the interim rates are "less than" the rates offered in a benchmark state.[5] For instance, when the FCC was evaluating SBC-California's ("SBC-CA") 271 Application, the FCC noted that SBC-CA's original interim DS3 loop rate was one of the "highest in the nation."[6] The FCC found, however, comfort in the fact that SBC-CA's voluntary reduction of the excessive interim rate to an amount lower than that of Texas benchmark rates assured the FCC that the DS3 loop rate fell within a range of "what a reasonable application of TELRIC would produce."[7] In this case and as reflected above, the FCC has no such comfort because SBC-IL's total EEL NRC of $932.06 is over twice as much as the total California and Texas benchmark charges, and is

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3 NRCs are taken from SBC's Reply Comments, Reply Affidavit of W. Karl Wardin, Attachment B at 2.

4 Globalcom's August 6 Comments at 15.

5 *Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization To Provide In-Region, InterLATA Services in California*, WC Docket No. 02-306, Memorandum Opinion and Order, 17 FCC Rcd 25650, ¶ 48 (2002) ("*Pacific Bell California Order*").

6 *Id.*

7 *Id.*

substantially higher than any SBC state in which Section 271 authority has been granted.[8]

II. SBC'S COMMENTS THAT ITS EEL NRCS COMPLY WITH TELRIC AND THAT GLOBALCOM'S OBJECTIONS ARE UNTIMELY SHOULD BE REJECTED.

A. Contrary to SBC-IL's contentions, Globalcom's objections to SBC-IL's EEL NRCs are timely under the circumstances.

SBC-IL contends that because Globalcom never challenged the NRCs in question in the ICC proceeding in which they were established and has not done so in recent ICC proceedings, the FCC should give little weight to the issues raised by Globalcom.[9] For the reasons discussed below, SBC-IL's characterizations are misleading and incorrect.

First, Globalcom was unable to purchase EEL combinations from SBC-IL prior to August 2002 so it had no basis to challenge EEL NRCs established prior to that time since the parties were not at issue on NRC rate application.[10] Additionally, the only resources available to assist in determining what NRCs applied to new EELs prior to February of 2003, were the SBC-IL tariffs and SBC personnel. The evidence clearly shows that tariff clarity was a significant issue.[11] And, SBC-IL's contention that Globalcom should have objected earlier is further

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[8] Relatedly, SBC argues that its cost studies associated with the $932.06 DS1 EEL Combination also includes other EEL combinations that are higher that what SBC-IL is charging today. SBC' s Reply Comments at 61. The reason for this is because some of these scenarios reflect additional work activities than those needed to provision DS1 EEL NRCs. As a result, there may be different costs associated with provisioning different EEL combinations. However, whether or not these "additional" costs are TELRIC compliant remains to be seen because SBC-IL's EEL NRCs have never been investigated in any TELRIC proceeding. If anything, Attachment E to the Reply Affidavit of Wardin demonstrates that SBC-IL's December 24, 2002 filing raises more questions as to whether the total NRCs associated with all scenarios reflect forward looking efficiently incurred costs as TELRIC requires. Because of this, SBC's California rates, which have been fully investigated and found TELRIC compliant, are far more reasonable and suitable benchmark rates that SBC-IL should mirror. *See also* Globalcom's August 6 Comments at 25-26.

[9] SBC's Reply Comments at 56.

[10] It is worth noting that SBC-IL refused to provide new EELs to Globalcom even under the Interim Compliance Tariff SBC-IL filed on September 18, 2001. In *Globalcom v. Illinois Bell Telephone*, ICC Docket No. 02-0365, the ICC found that SBC-IL violated Illinois and federal law in refusing to provide new EELs to Globalcom and awarded damages, attorneys' fees and costs. *See Globalcom v. Illinois Bell Telephone*, ICC Docket No. 02-0365, Order, at 50-51 (Ill. C.C. Oct. 23, 2002).

[11] *See* Globalcom's August 6 Comments, at 19-24, Tab 4 ¶¶ 16-32, Tab 5 at 2-6; *Illinois Commerce Commission On Its Own Motion Investigation Concerning Illinois Bell Telephone*

undercut because SBC personnel made both written and verbal confirmations to Globalcom that under the then applicable tariffs the EEL NRC for DS1 loop to DS1 dedicated interoffice transport was \$661.02.[12] Therefore, there was no reason to question the interim NRCs at that time.

SBC-IL's emphasis on the various interim rates for NRCs that it has filed since September 18, 2001, as "agreed"[13] to by Globalcom and other CLECs is also misleading at best. Equally, SBC-IL's emphasis that these various interim rates have been approved by the ICC is misplaced. SBC-IL ignores the fact that those tariffs were anything but a model of clarity, especially on the issue of rate application. In fact, SBC-IL fails to bring this Commission's attention to the fact that as recently as December 22, 2002, the ICC ordered SBC-IL as part of the 271 proceedings to provide some degree of UNE rate clarity to its tariffs:

> a) show that "its UNE rates are clearly defined by providing examples of typically requested UNE arrangements and explaining how services and products are billed under tariffs, the [General Interconnection Agreement], or agreements;" and,
>
> b) show that "its UNE 'combination rates', i.e., UNE-P and EEL rates, are clearly defined. This might be accomplished by providing examples of typically requested UNE combinations (e.g., common special access to UNE migrations, common new UNE combination requests, common reconfiguration requests, and EELs scenarios that would allow users enough information to determine how Ameritech applies rates to alternative but similar combinations)...".[14]

If SBC-IL's UNE rates were "agreed" to by competitive carriers and understood by ICC Staff in any meaningful way, there would have been no reason for the ICC to order SBC-IL to

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Company's Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 01-0662, Order on Investigation, ¶¶ 786, 833-840 (Ill. C.C. May 13, 2003) ("*ICC 271 Order*").

[12] *See* Globalcom's August 6 Comments, Tab 4, at 7, Tab 5 at 4.

[13] SBC's Reply Comments, Reply Affidavit of W. Karl Wardin, ¶¶ 12 & 15.

[14] *Illinois Commerce Commission On Its Own Motion Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271 of the Telecommunications Act of 1996,* Docket No. 01-0662, Phase I Interim Order, ¶ 686 (Ill. C.C. Dec. 22, 2002) ; *see also Illinois Commerce Commission On Its Own Motion, Investigation into the Compliance of Illinois Bell Telephone Company with the Order in Docket 96-0486/0569 Consolidated Regarding the Filing of Tariffs and the Accompanying Cost studies for Interconnection, Unbundled Network Elements and Local Transport and Termination and Regarding End to End Bundling Issues*, Docket No. 98-0396, Order, at 74 (Ill. C.C. Oct. 16, 2002) ("*ICC 10/16/02 Order*") ("The non-recurring charges a CLEC is expected to pay when it places an order for UNEs and/or UNE combinations were ordered to be clear and easily ascertainable. They are not.").

"clarify" those rates and their application.[15] The fact is that ICC Staff had taken the position in the 271 proceeding that SBC-IL's EEL tariff *was not clear on when certain NRCs applied.*[16] It is also interesting to note that SBC-IL's compliance with the ICC's directive to provide UNE rate clarity required written responses to data requests and verbal communication with ICC Staff that went beyond the four corners of the tariffs in order to explain how the NRCs actually applied.[17] That fact led ICC Staff to recommend that SBC-IL "take steps to make the rate application information it presented in [the 271 proceeding] available to CLECs."[18] Globalcom in fact performed that same exercise in August of 2002, when it requested that SBC-IL provide written and verbal explanations of how the EEL tariffs operated. SBC-IL in response provided both written and verbal confirmation in August of 2002 that the total NRCs for the DS1 loop to DS1 interoffice transport was $661.02.

SBC-IL's presentation of evidence on the interim NRCs for new EELs in Illinois also ignores the fact that the ICC has never had the opportunity to investigate TELRIC NRCs for new EELs because SBC-IL, prior to December 24, 2002, had never presented any cost studies or witness testimony on the NRCs for new EELs. The ICC first ordered SBC-IL to provide end-to-end bundling in 1996 in ICC docket 95-0458/0531.[19] After rejecting SBC-IL's arguments on end-to-end unbundling and noting that SBC-IL had not provided any evidence in the record to enable it to investigate NRCs for combinations, the ICC ordered SBC-IL to submit additional testimony in the "next stage of this proceeding" which was supposed to address, among other things, the NRCs for combinations.[20]

Rather than a "next stage," these issues resurfaced in ICC Docket No. 98-0396.[21] However, SBC-IL again did not respond to the ICC's directives: "The nonrecurring charges a CLEC is expected to pay when it places an order for UNEs and/or combinations were ordered to be clear and easily ascertainable… [t]hey are not."[22] In fact, SBC-IL only submitted evidence on

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[15] ICC Docket No. 01-0662, Staff Witness Dr. James Zolnierek, Staff Ex. 32.0, ¶ 147 (dated Feb. 21, 2003) ("While the evidence and testimony presented by the company has clarified how the Company applies the charges contained in it's UNE tariffs, this same evidence and testimony underscores the fact that the Company UNE tariffs do not make rate application transparent").

[16] *ICC 271 Order*, ¶ 786.

[17] *ICC 271 Order*, ¶¶ 836-838.

[18] *ICC 271 Order*, ¶ 838.

[19] *See also* ICC Docket 96-0486/96-0569, Second Interim Order, at 125 ("The Commission rejects Ameritech Illinois' critique of end-to-end network element bundling. As stated in our Order in Docket 95-0458/0531, the offering of end-to-end unbundling is consistent with the requirements set forth in the 1996 Act.")

[20] *Id.* at 125.

[21] *ICC 10/16/02 Order*, ICC Docket 98-0396, at 39.

[22] *Id.* at 74.

those combinations that it alone believed it was obligated under the law to provide.[23] Because SBC-IL did not provide the requested evidence, the original order was silent on what specific non-recurring charges should apply to new EELs.

With those issues in mind, the ICC adopted interim rates for non-recurring charges for new and second lines provisioned over the UNE-P as well as "as is" EEL migrations and other "new combinations" of network elements, again silent on the issue of NRCs for new EELs.[24] The ICC then set forth the manner in which it would determine permanent rates for these non-recurring charges:

> The Commission has reviewed the positions of the parties and finds it has been given no reason to conclude that Staff's proposed NRCs should not be adopted as interim rates. The Commission also agrees with Staff and Ameritech that the pressing need to finalize rates for UNEs and EELs compels us to immediately open a new docket to examine those issues. To that end, we direct Staff, in consultation with the parties to this docket and docket 01-0614, to prepare a report detailing the issues that should be addressed in the new docket. Upon the receipt of that report, we will initiate a docket to examine the issue we find germane. Finally, we agree that the non-recurring charges, as modified by Staff, shall remain in effect until new rates are approved in the new docket.[25]

It is these interim rates which ICC Staff repeatedly requested that SBC-IL provide clarity on and which SBC-IL personnel stated that the NRC for the DS1 loop/DS1 interoffice transport was $661.02. Consistent with the finding, the ICC's Order in Docket 01-0614 also recognized that issues related to EELs, including proper non-recurring charges for new EELs and for

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[23] *Id.* at 74

[24] *ICC 10/16/02 Order*, ICC Docket No. 98-0396, at 92-93 ("The Commission finds that Ameritech Illinois has not provided the requisite information for each of the five areas concerning UNE combinations identified by the TELRIC order [Second Interim Order, ICC Docket No. 96-0486/96-0569],and thus, has not complied with the TELRIC order in this respect.")

[25] *Illinois Commerce Commission On Its Own Motion, Investigation into the Compliance of Illinois Bell Telephone Company with the Order in Docket 96-0486/0569 Consolidated Regarding the Filing of Tariffs and the Accompanying Cost studies for Interconnection, Unbundled Network Elements and Local Transport and Termination and Regarding End to End Bundling Issues*, Docket No. 98-0396, Order on Reopening, at 11 (Ill. C.C. Apr. 30, 2002) ("*ICC Order on Reopening*").

migration of existing special access circuits to EELs, would need to be addressed in a new proceeding.[26]

Pursuant to the ICC's directive, ICC Staff convened workshops on August 22 and October 9, 2002, to discuss issues flowing from the *ICC Order On Reopening* and the *ICC 10/16/02 Order* in ICC Docket 01-0614 that the ICC committed to addressing in a new proceeding. Instead of awaiting the ICC Staff "report detailing the issues that should be addressed in the new docket" and a ICC order initiating "a docket to examine the issue [the ICC] find[s] germane," SBC-IL took it upon itself to file tariffs and proposed rates that go beyond those that were contemplated by the ICC. In so doing, SBC-IL unilaterally defined the rates and issues, leaving ICC Staff with few options but to await a tariff investigation resolution. However, after withdrawing at least one tariff filing, SBC-IL did not actually file new tariffs until December 24, 2002, which was the first opportunity that ICC Staff and CLECs had to fully investigate, among numerous other issues, the proper TELRIC NRCs for new EELs. As stated more fully below, Globalcom did intervene in that proceeding and did serve testimony and evidence in opposition to SBC-IL's proposed NRCs for new EELs. Before a hearing on the merits, however, SBC-IL successfully lobbied the Illinois General Assembly to mandate that the ICC adopt its December 24, 2002, proposed TELRIC rates and abate the ICC UNE cost proceeding, Docket No. 02-0864.

Second, contrary to SBC-IL's claim that Globalcom never objected to SBC-IL's EEL NRCs at the state level, Globalcom did challenged SBC-IL's EEL Rates in the ICC UNE cost proceeding, Docket No. 02-0864, and engaged expert witnesses, Dr. Ankum and Sidney L. Morrison, who filed joint testimony that demonstrated the extent to which SBC-IL's EEL NRCs were not TELRIC complaint.[27] However, because of SBC-IL's successful lobbying efforts to get 220 Ill. Comp. Stat. 5/13-408 & 13-409 passed, this proceeding was abated when this law went into effect on May 9, 2003. As a result, the ICC never had a chance to render a decision, which was expected to be released in September of 2003, that would have considered Globalcom's challenges to SBC-IL's EEL NRCs.

Third, like most CLECs, Globalcom does not have the resources to be an active participant in every SBC-IL proceeding before the ICC and made a business decision not to be an active participant in SBC-IL's 271 proceeding, ICC Docket 01-662. Instead, Globalcom

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[26] *See, e.g., Illinois Bell Telephone Company Filing to Implement Tariff Provisions Related to Section 13-801 of the Public Utilities Act*, Docket No. 01-0614, Order, at 74, 85 (Ill. C.C. June 11, 2002).

[27] *See* Attachment A, Direct Testimony of August H. Ankum, PH.D. and Sidney L. Morrison, which was circulated in ICC Docket No. 02-0864, at 12-14. Only pages 1-4 and 12-14 of this testimony are attached. If the Commission would like to review the entire 156 pages of testimony as it was provided to all the parties in ICC Docket No. 02-0864 (including SBC-IL), Globalcom would be happy provide it to the Commission upon request.

decided to challenge SBC-IL's EEL NRCs in the appropriate proceeding, which at that time was the UNE cost proceeding, ICC Docket No. 02-0864.

In short, the above sequence of events reveals that SBC-IL repeatedly has not complied with ICC orders to provide TELRIC NRCs for new EELs, the interim tariffs SBC-IL filed were anything but clear, and Globalcom did raise its objections regarding SBC-IL's NRCs for EELs before the ICC; however, they were never acted on. Globalcom is therefore timely in raising its objections now before the FCC.

B. SBC-IL's explanation that its EEL NRCs, which are the sum of the charges that apply to the constituent elements of a combination, are "reasonable" is not valid under TELRIC.

SBC-IL argues in its Reply Comments that even if the Commission considers Globalcom's challenge, the FCC must reject it if SBC-IL provides a "reasonable explanation" concerning the issue.[28] SBC-IL's explanations, as discussed below, are not at all reasonable as far as TELRIC principles or checklist item two are concerned.

SBC-IL first contends that its EEL NRCs are reasonable because they are the sum of the individual NRCs that were approved by the ICC that make up the combination at issue.[29] Such a position is entirely unreasonable because the ICC, as SBC-IL admits, set the individual nonrecurring UNE rates based on the costs of offering each UNE separately.[30] The ICC did not set them based on offering UNE EEL combinations and did not consider the efficiencies associated with doing so. In this instance, it is unreasonable to assume the whole is equal to the sum of the parts. By analogy, the cost of all of the parts of a $30,000 car, if purchased separately, may be as much as $80,000. SBC-IL's EEL NRCs are based on that latter premise and do not reflect the forward-looking and TELRIC based efficiencies of purchasing the UNEs in combination.

SBC-IL also maintains that its EEL NRCs are reasonable even though they are higher than the rates in other states on the grounds that the Commission has refused to "apply [the] benchmark analysis to reject UNE rates arrived through a proceeding that correctly applied TELRIC principles."[31] Again SBC-IL's interpretation of FCC rulings is wrong because TELRIC principles were never applied to EEL NRCs. They may have been applied to the separate and discrete UNEs that are combined to form an EEL but were never applied to determine the cost of providing the EEL combination itself. Regardless, the FCC's benchmarking analysis provides the FCC with confidence that a rate, despite the potential errors, falls within a range that a

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[28] SBC's Reply Comments at 57.

[29] SBC's Reply Comments at 57.

[30] SBC's Reply Comments at 57.

[31] SBC's Reply Comments at 58 (citing Vermont Order ¶ 26).

reasonable application of TELRIC principles would produce.[32] In this case, benchmarking fully demonstrates that SBC-IL's EEL NRCs are outside the TELRIC zone of reasonableness.[33]

C. SBC-IL's contention that its rates are "reasonable," which is based on SBC-IL's comparison of the total recurring and nonrecurring charges paid over a 12 and 24 month period, does not comply with TELRIC standards.

SBC-IL avers that its EEL NRCs are reasonable because the combined recurring and nonrecurring charges paid over a 12 to 24 month period of time are comparable to the combined charges assessed in other 271 approved states. Contrary to SBC-IL's contentions, the FCC's determination as to whether the rates of a 271 applicant are "reasonable" is based on whether they are reasonable under TELRIC or within a TELRIC zone of reasonableness. Basic TELRIC principles reflect the fact that recurring and nonrecurring costs must be recovered based on how the costs are incurred.[34] Therefore, the FCC, in reviewing a 271 application, does not evaluate a nonrecurring rate by looking at whether the combined recurring and nonrecurring charges paid over a certain period of time fall within a range that a CLEC would pay elsewhere.

For instance, when the FCC was evaluating Verizon-NJ's first 271 Application ("NJ I"), the FCC never performed such analysis with respect to Verizon's nonrecurring hot cut rates that

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[32] *Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide in-Region,* InterLATA Services in Virginia, WC Docket No. 02-214, Memorandum Opinion and Order, 17 FCC Rcd 21880, ¶ 89 (2002) ("*Verizon Virginia Order*") (citing *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, CC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, ¶ 49 (2002) ("*Verizon New Jersey Order*") (stating that when a state commission does not apply TELRIC principles or does so improperly, this Commission will look to rates in other section-271 approved states to see if the applicant's rates nonetheless fall within a range that a reasonable TELRIC-based rate proceeding would produce)).

[33] SBC baldly claims that some of Globalcom's calculations of what CLECs pay in other states are incorrect. Because of the time constraints involved in this proceeding, Globalcom has not had a chance to investigate this accusation. However, a review of Attachment B of Wardin's Reply Affidavit shows the magnitude of the difference between SBC-IL's NRCs other SBC 271 approved states as specifically referenced in the table above and demonstrates, consistent with Dr. Ankum's conclusions, that they are far beyond any TELRIC zone of reasonableness.

[34] *Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, FCC 96-325, ¶ 745 (1996) ("*Local Competition Order*") (subsequent history omitted).

ranged from $159.76 to $182.84 that were NJ BPU approved.[35] During the NJ I proceeding, Verizon's $159.76 BPU approved rate generated considerable controversy because it was excessive and many times more the rate charged in other Verizon states.[36] Because of this, Verizon withdrew its NJ I 271 application on March 19, 2002, day 89 of its application, as a result of "process concerns" that were raised with respect to the nonrecurring charge for performing a hot cut.[37] The next day, Verizon voluntarily reduced the effective hot cut rate in New Jersey to the $35 rate that was effective in New York.[38] After Verizon refiled its NJ 271 application ("NJ II"), the FCC found that the $35 hot cut rate in New Jersey was within the reasonable range that application of TELRIC principles would produce because the same rate was being offered in New York.[39] The FCC did not, and could not under TELRIC, evaluate whether the rate was with a TELRIC zone of reasonableness by evaluating whether the combined recurring and nonrecurring rates charged over a certain period of time were the same charged paid in other 271 approved states.

Considering what happened in NJ I, SBC-IL's current 271 Application is far worse. Unlike the NJ I, where there were specific, although excessive, state commission approved nonrecurring rates for hot cuts, SBC-IL does not have specific ICC approved rates for EEL combinations. Moreover, in the NJ II application, Verizon recognized the "process concerns" upon which its excessive hot cut rates were developed and voluntarily matched the $35 hot cut rate offered in New York.[40] In this instance, SBC-IL fails to acknowledge the inherent "process concerns" associated with its EEL NRCs and refuses to match the EEL NRCs offered in other states that, based on the NRCs assessed, apparently have far more efficient processes.

SBC-IL also argues that the FCC should blindly adopt the ICC's erroneous finding that SBC-IL's EEL NRCs are reasonable since the total recurring and nonrecurring charges paid over a 12 to 24 month period of time are comparable to the total charges assessed in other 271 approved states.[41] The FCC has, however, made it clear that it will reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce"[42] In this case, the ICC in the 271 proceeding made "clear errors in factual finding" because it did not compare SBC-IL's EEL NRCs with the EEL NRCs in other states. Instead, the ICC was satisfied with SBC-IL's demonstration that the rates are

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[35] *Verizon New Jersey Order*, ¶¶ 62 & 65.

[36] *Verizon New Jersey Order*, ¶ 65.

[37] *Verizon New Jersey Order*, ¶ 23.

[38] *Verizon New Jersey Order*, ¶ 23.

[39] *Verizon New Jersey Order*, ¶ 65.

[40] *See Verizon New Jersey Order*, ¶ 23.

[41] SBC's Reply Comments at 58-59.

[42] *Pacific Bell California Order*, ¶ 71.

reasonable based on combined recurring and nonrecurring charges paid over a 12 and 24 month period. If the ICC had made the proper comparison, it would have found that SBC-IL's rates fall outside an acceptable TELRIC range.[43]

SBC-IL further submits that FCC "precedent" confirms its position and tenuously argues that the FCC's benchmarking analysis that evaluates "non-loop" UNE-P recurring rates in aggregate provides support for comparing the total recurring and nonrecurring EEL charges paid over 12 to 24 months to the total amount paid in a benchmark state for a similar EEL combination. SBC-IL's interpretation of Commission precedent distorts that precedent. The FCC's non-loop benchmarking analysis is used because it is difficult for the Commission to determine, as a result of differing recurring rate structures across states, whether non-loop recurring rates a fall within the reasonable range that application of TELRIC principles would produce. Because of this, the Commission evaluates non-loop recurring rates in the aggregate to make that determination.

To elaborate, in determining whether a Bell company's **recurring** non-loop UNE-P rates satisfy the "benchmark" analysis, the Commission aggregates the recurring rates of "non-loop" UNE-P elements, i.e., the switch port, end-office switch usage, common transport (including tandem switch), and signaling, including vertical features, and compares them as a whole to the rates charged in the benchmark state. In performing the analysis, the Commission compares (1) the percentage difference between the rates of the 271 state application being reviewed and the benchmark state for the UNE-platform on a per-line per-month basis for non-loop rate elements collectively; and (2) the percentage difference between the costs of the 271 state application being considered and the benchmark state per-line per-month for non-loop rate elements, collectively.[44] The Commission performs such an analysis to get an apples to apples comparison that "reflects the practicalities of how UNEs are purchased and used."[45] The Commission does not review the nonrecurring and recurring rates collectively in performing this analysis.

Significantly, what is reasonable in this case, as Globalcom has presented, is to compare the total EEL NRCs SBC-IL changes for a given EEL scenario with the total EEL NRCs SBC assesses for a similar configuration in a benchmark state. This takes into account the differences in nonrecurring rate structures in provisioning EELs across different jurisdictions. This

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[43] Significantly, even with the ICC's flawed comparison, the ICC did find that SBC-IL's NRCs are on the "upper end of any zone of reasonableness." *ICC 271 Order*, ¶¶ 847 & 887. In addition, in asking the FCC to concur with the ICC findings, SBC fails to reveal that the ICC in rendering its decision was comforted by the fact that it was currently investigating SBC-IL's EEL rates in Docket 02-0864 and could may make adjustments to these rates that the Texas and Michigan data suggest may be necessary. Id. ¶¶ 847 & 887. As discussed above, that proceeding; however, was abated so the ICC does not have the flexibility to make any adjustments at this time.

[44] *Pacific Bell California Order,* ¶ 63.

[45] *Verizon Virginia Order,* ¶ 110.

comparison demonstrates that SBC-IL's EEL NRCs fall far outside an acceptable TELRIC range and therefore SBC-IL's 271 Application should be rejected.

D. **The fact that the rates are interim and subject to true-up does not make the rates any more reasonable.**

In its Reply Comments, SBC-IL avers that the challenged EEL NRCs are reasonable under the circumstances because the rates are interim and the ICC will eventually "reexamine" them. First, contrary to SBC-IL's suggestion, the NRCs for EEL combinations have never been examined in the first place and found to be TELRIC complaint.

Further, as explained in Globalcom's August 6 Comments,[46] the FCC has stated that the mere fact that rates are interim will not generally threaten a section 271 Application, provided that an interim solution to a particular rate dispute is reasonable under the circumstances. As demonstrated above and in Globalcom's previously filed comments, SBC-IL's interim rates are patently unreasonable by TELRIC standards and clearly fall outside an acceptable TELRIC range. In addition, SBC-IL's newly proposed total NRC of $932.06 likewise falls outside an acceptable TELRIC range.

Moreover, the Commission has made it clear that with the passage of time, states will have had sufficient time to complete these proceedings and it "will, therefore, become more reluctant to continue approving section 271 applications containing interim rates."[47] The Commission has reasoned that it would "not be sound policy for interim rates to become a substitute for completing these significant proceedings."[48] This FCC policy is directly applicable here and for the reasons below, serves as a sound basis to reject SBC-IL's 271 Application.

First, SBC-IL's tariff for EEL combinations went into effect approximately two years ago and lawful TELRIC compliant NRCs for EEL combinations have not been established.[49]

Second, because Docket No. 02-0684 has been abated – as a direct result of SBC-IL's extensive lobbying efforts--there is no active proceeding investigating SBC-IL's EEL NRCs nor will there be in the likely near future. Indeed, the 90 day and 9 month proceedings that must occur as the FCC's Triennial Review Order[50] requires will exhaust the ICC resources and will

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46 Globalcom's August 6 Comments at 14-16.

47 *Pacific Bell California Order*, Appendix C, ¶ 24.

48 *Pacific Bell California Order*, Appendix C, ¶ 24.

49 *See* SBC's Reply Comments, Wardin's Reply Affidavit, at Attachment F.

50 *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advances Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, & 98-147, Report and Order

likely take priority over a UNE cost proceeding.

Third, because the FCC is currently reevaluating its TELRIC rules,[51] it is very unlikely that the ICC will initiate a TELRIC proceeding in the near future. Because of this and in light of the state proceedings that must take place as a result of the Triennial Review Order, the ICC will likely hold off having any type of TELRIC investigation until state Triennial Review proceedings are completed. Realistically speaking, given the complexities of the Triennial Review Order and likelihood of delays caused by appeals etc., it may be two years from now before a proceeding is even initiated that does investigate SBC-IL's EEL NRCs. Significantly, such a time frame is contrary to the New York 271 Order because it exacerbates the uncertainties associated with having interim rates for both SBC-IL and CLECs since the rates are subject to true-up.[52]

Fourth, because the Triennial Review Order provides SBC-IL with substantial unbundling relief with respect to switching, EELs will become more important to UNE-P carriers as they transition from using SBC-IL's switch to using their own or a third party's. As a result, the price of EELs will be a significant factor in whether this transition occurs.

In light of the above circumstances, the FCC should not approve SBC-IL's 271 Application with these interim rates.

E. **SBC-IL's proposal does not resolve the problem with SBC-WI's EEL NRCs.**

With respect to Wisconsin, SBC-WI contends that its Wisconsin 271 Application satisfies checklist item number 2 even though SBC-WI EEL NRCs have not been found by the Wisconsin Public Service Commission ("Wisconsin PSC") to be TELRIC compliant and are not within a zone that TELRIC complaint rates would produce.[53] Checklist list item two and the Commission decisions interpreting it, however, require that UNE rates be TELRIC based. As a result, SBC-WI's 271 application should be denied consistent with the FCC's statement that it will "reject an application if basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."

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and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) ("Triennial Review Order").

[51] FCC Press Release, Federal Communications Commission to Review Telephone Unbundled Network Element Pricing Rules (Sept. 10, 2003).

[52] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3961-63, ¶ 258 (1999) ("*Bell Atlantic New York Order*"), aff'd, AT&T Corp. v. FCC, 220 F.3d 607 (D.C. Cir. 2000).

[53] The Wisconsin PSC has specifically deferred rendering a ruling regarding these rates and has indicated that it will take up any issues with them in an arbitration setting.

In this case, TELRIC principles have not been applied and SBC-WI's EEL NRCs are far outside any range that a reasonable application of TELRIC would produce. As shown below, SBC-WI rates of $2,295 is $1,784,65 more than the amount SBC charges on average in SBC 271 approved states and is 6.55 and 5.24 times the amount SBC charges in California and Texas, which are benchmark rates used by the FCC for rate comparison purposes. To make matters worse, the rates are not subject to retroactive true-up.

271 Approved States	**DS1 EEL NRC**[54]	**Diff. from SBC-WI NRC of $2,295.81**
Arkansas	$521.02	$1,774.79
California	$350.22	$1,945.59
Kansas	$521.02	$1,774.79
Missouri	$778.41	$1,517.40
Nevada	$344.75	$1,951.06
Oklahoma	$624.81	$1,671.00
Texas	$437.67	$1,858.14
Average	$511.13	$1,784.68

Globalcom is evaluating whether it should expand its Illinois business plan that relies on EELs to Wisconsin; however, SBC-WI's excessive NRCs for EELs in Wisconsin serve as a barrier to entry and make such a business plan uneconomic.[55]

Given the *glaring and unreasonable* nature of these NRCs, the Commission should not approve SBC-WI's 271 Application. It would be contrary to 271 if the Commission disregarded this significant defect in SBC-WI's 271 Application and did otherwise. In this instance, it is

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[54] NRCs are taken from SBC's Reply Comments, Reply Affidavit of W. Karl Wardin, Attachment B at 2.

[55] Significantly, the Wisconsin PSC did not reach a finding as to new EEL NRCs and instead left it to individual carriers to "negotiate" rates with SBC-WI, a process that no doubt will require considerable resources as SBC insists on the aggregate NRCs for stand alone UNEs. *See Investigation Into SBC Wisconsin's Unbundled Network Elements*, Docket No. 6720-TI-161, UNE Compliance Order, at 9, 16-19 and Appendix B at 2, & 9-10 (Wis. P.S.C. July 9, 2003); *see also* SBC-WI Reply Comments, Reply Affidavit of Scott T. VanderSanden, ¶ 7. In addition, contrary to SBC-WI's suggestions, Globalcom does not deem SBC-WI's excessive and non-TELRIC based rates acceptable since Globalcom seeks to adopt an interconnection agreement in Wisconsin that included such rates. SBC's Reply Comments Reply Affidavit of Scott T. VanderSanden, ¶ 12. When Globalcom made the request to adopt that agreement, Globalcom did not find SBC-WI's EEL rates were acceptable for Globalcom's business strategy that requires the use of them.

absolutely clear that the total EEL NRC is not compliant with checklist item 2. Moreover, SBC-WI has refused to reduce its NRCs to cure this defect in its 271 Application as SBC has done in the past when its rates did not appear, on their face, to be TELRIC compliant. In short, the failure of the Wisconsin PSC to prescribe TELRIC based EEL NRCs and SBC-WI's refusal to voluntarily lower them, in light of their unreasonable nature, leaves the Commission no other choice than to deny SBC-WI's 271 Application.

CONCLUSION

For the foregoing reasons and as submitted in Globalcom's August 6 Comments, Globalcom requests that the Commission deny SBC-IL's and SBC-WI's 271 Application because SBC has failed to cure the deficiencies associated with its filing that Globalcom identified.

Sincerely,

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Attachments

cc:
Chairman Powell, FCC
Commissioner Abernathy, FCC
Commissioner Adelstein, FCC
Commissioner Copps, FCC
Commissioner Martin, FCC
William Maher, FCC
Jeffery Carlisle, FCC
Pamela Arluk, FCC
Deena Shetler, FCC
Douglas Galbi, FCC

Marv Sacks, FCC
Kevin Walker, SBC (all via e-mail)

ATTACHMENT A

BEFORE THE
ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	)	
	)	
Filing to increase Unbundled Loop and Nonrecurring Rates (Tariffs filed December 24, 2002)	)))	**Docket No. 02-0864**

DIRECT TESTIMONY OF

AUGUST H. ANKUM, PH.D.
SIDNEY L. MORRISON

On behalf of

AT&T Communications of Illinois, Inc.
MCI, Inc.
McLeodUSA Telecommunications Services, Inc.
Covad Communications Company
TDS Metrocom, LLC
Allegiance Telecom, Inc.
RCN Telecom Services of Illinois, Inc.
Globalcom, Inc.
Z-Tel Communications, Inc.
XO Communications, Inc.

May 6, 2003

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Exhibits

A. Yes, I do. I have done exactly the work that is at issue in SBC-Illinois nonrecurring cost studies for more than 30 years. Likewise, I have managed hundreds of individuals doing this same work and labored to create processes and support systems aimed at doing it better, faster and more cost effectively. Indeed, as described above, I have created operational support systems and business processes from scratch and worked continuously with those organizations until they were certified under ISO Standards. Finally, I have conducted numerous time and motion studies within an organization highly similar to SBC-Illinois (US WEST) for many of the same activities at issue here.

B. PURPOSE AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. Statement of Purpose

Q. PLEASE STATE THE PURPOSE OF THIS TESTIMONY.

A. The purpose of this testimony is to review SBC' proposed non-recurring charges and cost studies in light of previous Commission Orders and the FCC's TELRIC methodology. We will also propose revisions and offer revised studies to make the non-recurring charges appropriately TELRIC based.

Our testimony describes for the Commission the rigorous process we have undertaken in reviewing SBC's cost models and identifies areas where we believe SBC NRC cost models include unreasonable assumptions resulting in NRCs substantially higher than would be expected in an efficient forward looking operation.

The criticisms and recommendations included in this testimony are based upon the experience of QSI consultants in:

(a) Reviewing cost studiesand familiarity with this Commission's previous Orders and the FCC's TELRIC methodology;
(b) Building provisioning systems and organizations responsible for performing these same functions;
(c) Analyzing efficient processes and methods by which to improve performance with respect to these same activities; and
(d) Actually performing these the various functions in a business environment.

Attached to this testimony are revised cost studies that incorporate the recommendations we make in this testimony. These corrected cost studies are submitted to provide the Commission with a proper basis for adopting TELRIC based rates for non-recurring service ordering and service provisioning rate elements.

Q. WHICH OF SBC' NRC STUDIES WILL YOU REVIEW IN THIS TESTIMONY?

A. In this testimony, we will review all of SBC NRC studies and make general recommendations for correcting the flaws in those studies. Further, we will pay particular attention to the *service ordering* and *service provisionin*g nonrecurring charges associated with the following UNEs:

- UNE-Platform ("UNE-P").
- Enhanced Extended Links ("EELs).
- UNE Loops.

Specifically, we will *review* and *correct* the following service ordering and service provisioning cost studies:

Service Provisioning studies:

- Combination ULS Port
- Custom Routing
- ULS Port Features
- EEL - New
- Special Access to EEL Conversion
- Loops

Service Ordering Studies:

- EELs - New
- Special Access to EEL Conversion
- Existing UNE-P
- New Combination UNE-P
- Loops
- ULS Port

Each of the above studies has been filed by SBC as a separate Excel study. A description of each study and a match-up between these studies and the Excel file names is found in Attachment 3 to this Panel Testimony.

2. Summary of Findings and Recommendations

Q. DO YOU HAVE SOME GENERAL OBSERVATIONS WITH RESPECT TO SBC' NRC STUDIES?

A. Yes. As is clear from even a casual comparison between the current rates and SBC' proposed rates, the company is intent on drastically altering the competitive